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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/951,832	10/16/97	LINA	C 06-2916.312

022775
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QM32/0828

EXAMINER

RUHL, D

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 08/28/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/951,832

Applicant(s)
Lina et al.

Examiner
Dennis Ruhl

Group Art Unit
3761



☒ Responsive to communication(s) filed on Jul 19, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-8, 13, and 16-26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 8, 13, and 22-25 is/are allowed.

☒ Claim(s) 1-7, 16-21, and 26 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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In response to the interview of 4-3-00 the finality of the previous office action has been withdrawn and applicant's after final amendment of 7-19-00 has been entered and treated on the merits. The examiner will address applicant's remarks at the end of this office action.

1. Claims 2-7,21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 2, if claim 1 recites the filter as being interposed (between) the canister and pump then how can it be within the canister as is claimed in claim 2? If it is within the canister it cannot also be between the canister and the pump. This claim makes no sense because claim 2 contradicts claim 1. This claim will be examined as it is best understood by the examiner (as well as the dependent claims that depend from claim 2). The scope of this claim is unclear.

With respect to claim 21, this claim depends to itself and because of this, the scope cannot be determined. Because the examiner cannot assume what independent claim or dependent claim this claim is supposed to depend from, a prior art examination of this claim is not warranted. Correction is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

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has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 26 is rejected under 35 U.S.C. 102(e) as being anticipated by Elson (5466229).

Elson discloses a pad 24, tube 22, canister 12 and suction pump 14. The pump, tube, pad, and canister are all in fluid communication with each other. The bacterial filter is 138. See column 10, lines 10-24. The pad is capable (is adapted) of being positioned as claimed. The first sensor is 144. The second sensor is 158. Both sensors are associated with the pump as claimed. The pressure transducer is 236 and is associated with the pump as claimed.

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5. Claims 1-6,16,18-20, are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Elson et al. (5466229).

With respect to claims 1,2, Elson discloses a pad 24, tube 22, canister 12 and suction pump 14. The pump, tube, pad, and canister are all in fluid communication with each other. The hydrophobic membrane filter is 138. The filter 138 defines a membrane and is disclosed as being "non wetting" (hydrophobic). See column 10, lines 10-24. The pad is capable (is adapted) of being positioned as claimed. The claim is anticipated in the sense that Elson discloses that the bacterial filter can have a pore size of equal to or less than 0.8 microns. This includes the value of 0.2 microns as claimed. The claim is considered obvious under 35 USC 103 because Elson discloses the filter as claimed except for specifically disclosing a pore size of 0.2 microns. The statement "with a pore size equal to or less than 0.8 microns" shows that lower pore sizes are contemplated by Elson. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the filter of Elson with a pore size of 0.2 microns so that smaller sized particles can be trapped by the filter.

With respect to claim 3, the housing is 20.

With respect to claim 4, the canister is removably retained in a recess as claimed.

With respect to claim 5, see column 13, lines 33-42.

With respect to claim 6, Elson incorporates by reference patent no. 4747166 with respect to the material for the pad (column 13). Because of this Elson discloses a polymer foam with

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interconnecting cells (the expanded cellulose microcellular material with an open cell construction). Cellulose is a polymer.

With respect to claim 16, the sensor to detect when the canister is full is float 144. When float 144 rises with the fluid in the canister to indicate a full condition, switch 236 will shut off the pump vacuum. See column 10, lines 41-66.

With respect to claims 18-20, the tilt sensor is 158. It can detect a tilt of more than 45 degrees and the sensor is associated with the pump to stop operation of the pump as claimed.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elson in view of Martin (4631061).

Elson discloses the invention substantially as claimed. Elson discloses that the liquid sensor that detects a full condition for the canister can be "electrical sensors which respond to contact by the liquid filling the container". Elson does not specifically disclose that these electrical sensors are capacitance sensors. Martin discloses a fluid collection system that uses capacitance sensors to indicate the level of liquid collected and to alert the user that a full condition has been reached. See column 4, lines 34-58. Martin discloses that the liquid level sensor can be a capacitance sensor (column 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Elson with capacitance sensors as disclosed by Martin so that the fluid level of the canister can be detected. Elson discloses the use of electrical sensors that respond to contact by fluid and providing a capacitance sensor (an

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electorial sensor that responds to contact by fluid) is considered obvious to one of ordinary skill in the art.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elson in view of Todd et al. (5437651).

Elson discloses the invention substantially as claimed. Elson does not disclose polyether foam with 95% interconnecting cells although Elson does disclose the use of a foam material. Todd discloses a fluid collection system that uses a pad 12 that is made from polyurethane foam. The examiner considers polyether foam and polyurethane foam to be the same thing. They are equivalents. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the foam of Todd in the system of Elson so that fluid can be readily collected by the void space in the foam.

8. Claims 8,13,22-25, are allowed.

9. Applicant's arguments filed 7-19-00 have been fully considered but they are not persuasive.

With respect to the 112,2nd paragraph rejection of claim 2 the argument is non-persuasive. With respect to claim 2, if claim 1 recites the filter as being interposed (between) the canister and pump then how can it be within the canister as is claimed in claim 2? It cannot be both. The examiner also notes that the claim does not recite anything about being interposed in the fluid flow as applicant has argued. The argument is non-persuasive.

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With respect to the Elson reference and claim 1, all applicant has argued for patentability is that Elson does not disclose a 0.2 micron filter. The examiner disagrees and refers applicant's counsel to the rejection of record that addresses this limitation.

With respect to the rejection of claim 7 under 35 USC 103, applicant has argued that the base reference is non-analogous art and cannot be used in a prior art rejection. The examiner has no idea where applicant's position comes from, and can only state that the issue of analogous art is relevant to the secondary reference being relied upon to supply the deficiency of the base reference. It is improper to argue that the base reference is non-analogous. The argument is non-persuasive.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is (703) 308-2262.

A handwritten signature in black ink, appearing to read 'D. Ruhl', with a stylized, flowing script.

Dennis Ruhl

Patent Examiner

August 23, 2000